



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: RCI Management, Inc.

File: B-228225

Date: December 30, 1987

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### DIGEST

Although agencies generally should not require performance and payment bonds for other than construction contracts, inclusion of bonding requirements in solicitation for maintenance services is reasonable, and thus, legally unobjectionable, where, due to location and climatic factors, reprocurement would be difficult in the event of default and the services could not be performed by government personnel in the event of default due to understaffing at the facility.

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### DECISION

RCI Management, Inc. protests the bonding requirements in Department of the Navy invitation for bids (IFB) No. N62474-87-B-7441. The solicitation, set aside for small business concerns, invited bids for the maintenance and repair of family housing units at the Marine Corps Air Station, Yuma, Arizona, and required the awardee to submit a performance bond in an amount equal to 50 percent of the base year contract price and a payment bond in an amount equal to 25 percent of this price. RCI protests that these bonding requirements are not appropriate under the Federal Acquisition Regulation (FAR).

We deny the protest.

The FAR states that although agencies generally should not require performance and payment bonds for other than construction contracts, these bonds may be required for nonconstruction contracts where needed to protect the interests of the government. 48 C.F.R. § 28.103 (1986). The regulation gives four examples of such situations: where government property or funds are to be provided to the contractor for its use or as partial compensation; where the government wants assurance that the contractor's successor in interest is financially capable; where substantial progress payments are made before delivery begins; and where the contract is for dismantling, demolition or removal of

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improvements. 48 C.F.R. § 28.103-2. RCI maintains that the decision of the contracting officer to impose the bonding requirements violated this provision because none of the situations identified is present in this procurement.

RCI's position that the four examples alone are the only circumstances under which bonds may be required is incorrect. We have held that the FAR permits the use of bonding requirements in every situation where they are needed to protect the government's interests, not only in the four situations specifically mentioned in the regulation. Express Signs International, B-225738, June 2, 1987, 87-1 CPD ¶ 562. In reviewing a challenge to the imposition of a bonding requirement we look to see if the requirement is reasonable and imposed in good faith; the protester bears the burden of establishing unreasonableness or bad faith. Id; Professional Window and Housecleaning Inc., B-224187, Jan. 23, 1987, 87-1 CPD ¶ 84.

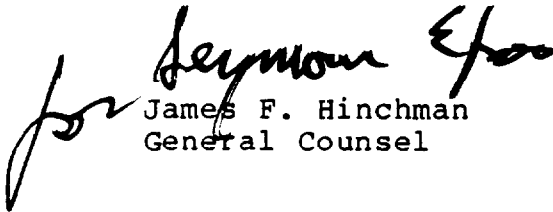
The contracting officer cites two considerations that warrant bonding in this case. First, he explains that the facility is subject to somewhat unique climatic conditions (e.g., blowing sand and high temperature) that cause problems requiring specialized maintenance skills and equipment and that, due to the facility's remote location, a reprocurement of these services in a short time frame could be difficult. Second, the contracting officer states that, due to current understaffing, there would be insufficient in-house personnel to perform critical maintenance functions in the event of the contractor's default. In view of these two factors, the contracting officer concludes that nonperformance would result in significant additional costs to the government and would have serious adverse effects on the health, welfare, and morale of the service members and dependents living in family housing.

We cannot conclude that the contracting activity's decision to require performance and payment bonds is unreasonable. Our Office has endorsed the imposition of bond requirements where continuous operation of critically needed services is absolutely necessary. For example, we have upheld the inclusion of these requirements in solicitations for custodial and general house keeping services, Professional Window and Housecleaning, Inc., B-224187, supra, and for janitorial services, Galaxy Custodial Services, Inc. et al., 65 Comp. Gen. 593 (1985), 85-1 CPD ¶ 658, where their performance was deemed necessary to ensure satisfactory operation of a government facility. Similarly, here, the contracting officer effectively determined that bonding was necessary in that potential interruption of the housing maintenance and repair services posed a risk to the government plant and facilities and threatened the health

and welfare of service members. RCI does not argue, and we do not find, based on this record, that this determination was unreasonable or made in bad faith.

Additionally, RCI contends that the bonding requirements were inappropriate here as their inclusion in the IFB could exclude many small businesses from the competition. While RCI may be correct in its assessment, this does not render the bonding requirement improper. Although a bond requirement may result in a restriction of competition, it nevertheless can be a necessary and proper means of securing to the government the fulfillment of the contractor's obligations under the contract in appropriate situations. D.J. Findley, Inc., B-221096, Feb. 3, 1986, 86-1 CPD ¶ 121. We already have found that this is the case here.

The protest is denied.

for  
James F. Hinchman  
General Counsel